IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.R.No. 4352 of 2006
Date of decision : 9.02.2007

Amritpal Singh

.....Petitioner.

Versus

Om Parkash

.....Respondent.

CORAM : HON'BLE MR. JUSTICE VINOD K. SHARMA

Present : Mr.Binderjit Singh,Advocate
for the petitioner.

Mr. N.K. Singla, Advocate
for the respondent.

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VINOD K. SHARMA,J.(ORAL)

The petitioner by way of this revision petition has challenged the order passed by the learned Addl. Civil Judge (Sr. Divn.), Talwandi Sabo vide which the petitioner was allowed to contest the suit subject to his furnishing security to the tune of Rs. 5,00,000/- (Rupees five lacs) with one surety of like amount.

The petitioner in pursuance to the summons received by him on 18.5.2005 appeared before the Court and sought time for filing leave to defend as the summons issued were under Order 37 Rule 1 of the Code of Civil Procedure (for short “the Code”). The learned trial Court instead of giving time to the petitioner to move appropriate application for leave to defend passed the impugned order on the statement of the counsel for the plaintiff allowing him conditional leave to defend.

The contention of the learned counsel for the petitioner is that the procedure followed by the learned trial Court cannot be sustained. The

right for leave to defend is statutory right of the petitioner, which could not be defeated by the learned trial Court.

I have considered the arguments raised by the learned counsel for the parties and find that the impugned order cannot be sustained. The learned trial Court was bound to consider the grounds taken in the application for leave to defend and thereafter it had to form an opinion as to whether any triable issue arises for consideration or the defence taken is merely a moon shine or illusory. In case triable issue arises for consideration, then the Court is bound to give liberty to contest the suit unconditionally. It is only in case the learned Court below comes to the conclusion that the defence raised is merely an illusory; in that event leave to defend can be granted conditionally.

As in the present case, the petitioner has not applied for leave to defend. There was no occasion for the Court to pass the impugned order. Accordingly, the revision petition is allowed and the impugned order is set aside.

Keeping in view the fact that the revision was pending in this Court, the petitioner is granted ten days time from the date of receipt of certified copy of this order to move an application for leave to defend. In case any such application is moved, the trial Court shall decide the same in accordance with law.

Copy of this order be given dasti on payment of usual charges.

9.2.2007 **(VINOD K. SHARMA)**
'sp' **JUDGE**